

13 September 1947

MEMORANDUM FOR CONTACT BRANCH

Thru: The Assistant Director for Operations

Subject: Inviolability of Files
OGC Has Reviewed

1. This office has reviewed your request of 22 August 1948, for an opinion on the inviolability of files and records of your office and on the furnishing of information which might be requested of employees in your branch. These problems have a long history in the United States and go to the heart of the original concept of our form of Government. This history was summarized in a letter dated April 30, 1941, from then Attorney General Robert H. Jackson to the Hon. Carl Vinson, then Chairman of the House Committee on Naval Affairs. That Committee had requested the Department of Justice to furnish all records in connection with investigations made by the Department of Justice arising out of certain strikes and subversive activities.

2. Mr. Jackson states "It is the position of this Department, restated now with the approval of, and at the direction of, the President, that all investigative reports are confidential documents of the Executive Department of the Government * * * and that Congressional or public access to them would not be in the public interest." Mr. Jackson points out how disclosure of the information would prejudice the national defense and the future usefulness of the Federal Bureau of Investigation. Both arguments apply equally well to the confidential reports and records of OGC. Mr. Jackson refers to a line of Attorney General's decisions stating the same position and dating back to 1801. He points to refusals by Presidents Washington, Monroe, and Jackson among others to produce records of the Executive Office. Mr. Jackson cites a number of court opinions holding that the question whether the production of papers would be against the public interest is one for the executive and not for the courts to determine. These opinions emphasize the division of power in the Federal Government and the right of each of the three divisions to exercise its functions without interference from the others.

3. Mr. Jackson's opinion is therefore, very strong support for the position that confidential records of OGC, production of which would not be in the public interest, need not be furnished to Congress at its request. We wish to point out however, that we are not aware of any final ruling on the problem that would arise if Congress were to insist on the production of the records and were to bring contempt or other proceedings against the Head of the Department concerned. We believe, however, that as a

2. Contact Branch

18 Sept. 1947

practical matter it is unlikely that such proceedings would be instituted, and if they were, that the cases cited by Mr. Jackson indicate that such proceedings would be set aside.

4. It will be apparent from the above that the decision on release in each case, is the sole responsibility of the Director of Central Intelligence. Congress has seen fit to strengthen his position in this respect in Section 100-D, sub-section 2, by providing "That the Director of Central Intelligence Group shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

5. The question of employees who might be called upon by Congressional Committees or other agencies to testify relates in essence to the points discussed above. Any confidential information possessed by them is in the same category as information in records. At the time of employment they are required to take an oath not to reveal such information unless authorized in writing by the Director of Central Intelligence. This oath is a condition of their employment by CIG. It also puts them on notice that release of such information affecting the national security or defense, may subject them to prosecution under the Espionage Act. If called, therefore, to testify in connection with confidential matters such as identification of sources, or disclosures of methods and techniques, they should cite the oath and conditions of employment and their responsibility to the Director. If he does not see fit to authorize release of the information, the Director is in the same position as in a request for production of confidential documents. In our opinion therefore, confidential records pertaining to investigations by your office and other information in your files which may pertain to the national defense or security, are but part of all such files of CIG and it would be our position they are not subject to subpoena. Also, in our opinion, employees of CIG may not be required to testify concerning such information without express permission from the Director of Central Intelligence.

6. In conclusion we wish to comment on your remarks concerning the Espionage laws, particularly your statement that intent must be proved to find a man guilty. Under Section 3, of Title 50, U.S.C., subsection 2, a man may be fined \$10,000 or imprisoned for 2 years who, through gross negligence, permits information relating to the national defense to be removed from its proper place of custody or delivered to any one in violation of his trust, or to be lost, stolen, abstracted, or destroyed. Under section 32 of the Act, whoever with intent,

15 Sept 1947

no reason to believe that it is to be used to the injury of the United States, or to the advantage of a foreign nation, communicated to any person connected with a foreign government, information as for not as time of war. between enemy or friendly foreign nations communicate and the aiding of another information under the above circumstances same penalties. We believe these provisions are more effective than is commonly believed, and we feel that this is borne out by decisions such as the *Haupt* case, decided by the Supreme Court in 1940 (61 S.Ct. 499).

7. This office will always be glad to advise on any specific cases arising in connection with the problems discussed herein.

LAWRENCE R. HOUSTON
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cc: Ex. 149
Log. & Liaison

LRS:cmj